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PETITION

OF THE

New Idria Mining Company

TO THE

PRESIDENT OF THE UNITED STATES.

M. D. Carr & Co. Printers, 532 Clay Street, San Francisco.



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P E T I T I O N .

TO THE PRESIDENT OF THE UNITED STATES—

Sir: By a resolution of the Board of Trustees of the New Idria Mining Company, I am directed to address to your Excellency the following communication:

From a correspondence between your Excellency and Secretary Cox, lately given to the public, the Board is satisfied that you have been grossly imposed on by interested and designing parties in relation to the facts and circumstances under which the "New Idria Mining Company" is seeking a patent at the hands of the Executive of the United States. They hope by a plain and simple statement, for the correctness of which they appeal to the archives of the office of the Secretary of the Interior, to dispel any illusion under which you may labor.

For more than twenty years the public lands of the United States have been open to settlement, occupation and use by its citizens. Under the operation of this system, gold, silver, copper and cinnabar have been extracted in such quantities as to make their products one of the leading interests of the country. Although for a long time no express license was granted by the Government to extract the precious metals from the public lands, the rights acquired under the mining laws of the different districts were recognized in several enactments, and were, invariably, respected by the Congress of the United States. Indeed, it was under the permissive and fostering action of the Government that this branch of industry expanded and grew into its present vast proportions.

But on the 26th day of July, 1866, Congress passed an Act that converted this implied license into an actual and substantial right. The chief provisions of this Act run as follows :

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the mineral lands of the public domain, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and occupation by all citizens of the United States and those who have declared their intention to become citizens, subject to such regulations as may be prescribed by law, and subject also to the local customs or rules of miners in the several mining districts, so far as the same may not be in conflict with the laws of the United States.

SEC. 2. *And be it further enacted,* That whenever any person, or association of persons, claim a vein or lode of quartz, or other rock in place, bearing gold, silver, cinnabar or copper, having previously occupied and improved the same according to the local custom or rules of miners in the district where the same is situated, and having expended in actual labor and improvements thereon an amount of not less than one thousand dollars, and in regard to whose possession there is no controversy or opposing claim, it shall, and may be, lawful for said claimant, or association of claimants, to file in the local land office a diagram of the same, so extended laterally or otherwise, as to conform to the local laws, customs and rules of miners, and to enter such tract, and receive a patent therefor, granting such mine, together with the right to follow such vein or lode, with its dips, angles and variations, to any depth, although it may enter the land adjoining, which land adjoining shall be sold subject to this condition.

SEC. 3. *And be it further enacted,* That upon the filing of the diagram as provided in the second section of this Act, and posting the same in a conspicuous place on the claim, together with a notice of intention to apply for a patent, the

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Register of the Land Office shall publish a notice of the same in a newspaper published nearest to the location of said claim, and shall also post such notice in his office for the period of ninety days; and after the expiration of said period, if no adverse claim shall have been filed, it shall be the duty of the Surveyor General, upon application of the party, to survey the premises and make a plat thereof, indorsed with his approval, designating the number and description of the location, the value of the labor and improvements, and the character of the vein exposed; and upon the payment to the proper officer of five dollars per acre, together with the cost of such survey, plat, and notice, and giving satisfactory evidence that said diagram and notice have been posted on the claim during said period of ninety days, the Register of the Land Office shall transmit to the General Land Office said plat, survey, and description, *and a patent shall issue for the same thereupon.* But said plat, survey or description shall in no case cover more than one vein or lode, and no patent shall issue for more than one vein or lode, which shall be expressed in the patent issued.

Here, your Excellency will perceive that the Legislative Department, to which, by the Constitution, the disposition of the public lands is entrusted, has made a disposition of the mineral lands of the United States, whereby they become the private property of its citizens, upon certain specified terms and conditions. These terms and conditions being complied with, upon the Executive is devolved the mere ministerial duty of signing and delivering the Patent.

Now, the lode claimed by the New Idria Mining Company was discovered in 1852, and was located according to the mining laws of the district in the year 1854; and from that day to this has been in the possession, and, excepting a litigation in the State courts of California, instituted by Wm. McGarrahan in which he was defeated, has been in the quiet, undisturbed and unquestioned possession, of the company and its grantors. There has been expended on this lode not only the required sum of one thousand dollars,

but, at the least, an amount of one hundred and fifty thousand dollars.

In 1866, the land in which this lode is situated was the undoubted and unquestioned property of the United States. At that time no Mexican grant, which it was claimed, or pretended, covered this lode, had been confirmed; nor is it pretended that any such was pending or existing. On all hands it is admitted that on the 26th day of July, 1866, the land in which this lode is located was the public property of the United States, and within the purview of the Act of that date, the principal provisions of which are herein quoted.

Under the provisions of that Act, the company proceeded to perfect their title to this lode; they filed in the local office a diagram of their claim, comprising about four hundred and eighty acres, a quantity, as they proved to the satisfaction of the proper officer, within the limits prescribed by the mining laws of the district, and within the limits prescribed by the Act; they posted the same, with a notice of their intention to apply for a Patent, in a conspicuous place upon the claim; the Register of the Land Office published a notice of the same in the proper newspaper, and also in his office, for ninety days; the Surveyor General, upon satisfactory proof made to him of these facts, surveyed the premises and made a plat thereof, indorsed with his approval, designating the number and description of the location, the value of the labor and improvements, and the character of the vein exposed; and the Company paid to the proper officer five dollars an acre for the said 480 acres, together with the cost of such survey, plat and notice; and having given satisfactory evidence that said diagram and notice had been posted on the claim for the said period of ninety days, and no adverse claimant to any part of said location having appeared before the approval of the survey, the Register of the Land Office transmitted to the General Land Office said plat, survey and description. In short, every requirement of the Act of 1866 was complied with in the most minute particular, upon a compliance with which the statute declares that "the Patent shall issue."

For the correctness of these statements we again appeal to the records in the archives of the Department of the Secretary of the Interior.

We stand precisely where stood the Chollar, the Gould and Curry, the Savage, the Hale and Norcross, in Nevada ; the Eureka, the Idaho, the Empire and other gold mines in California, and the Clear Creek Quicksilver Mine in the immediate neighborhood of the New Idria, to which patents have been issued. Why were patents issued in all these cases, whilst in ours proceedings have been so long suspended ? The only ground upon which this tedious and onerous delay is pretended to be justified, is found in the following facts. The same McGarrahan who, as we have before said, harrassed us with a fruitless litigation in the Courts of California, this defeated claimant, defeated both in the State and Federal courts, caused a bill to be introduced into the House of Representatives in the winter of 1867-8, which gave him the right to purchase of the United States about seventeen thousand acres of land at the minimum price, viz. : at a dollar and a quarter an acre. In support of this bill, McGarrahan represented to the committee to whom it was referred that he was a *bona fide* purchaser, from one Vicente Gomez, (a Mexican claimant, whose claim had been finally rejected by the Supreme Court of the United States,) of the land he proposed to purchase. In this very application, McGarrahan admitted that the land was the property of the United States ; and, as we have seen, so far as it was mineral land, Congress had made another and different disposition of it in July, 1866. But, in fact, the land that McGarrahan sought to purchase is located from twelve to eighteen miles south and east of the land claimed by Gomez. During the pendency of Gomez' claim before the courts of the United States, McGarrahan procured an *ex parte* survey of the claim, and had it located so as to include the property of the New Idria Company. It is the land contained in this spurious survey that he seeks the right to purchase.

In entire ignorance of the facts here detailed, the House of Representatives passed this bill. When it came to the Senate, it was referred to the Committee upon Private Land Claims, by whom the case was fully and thoroughly investigated; and upon the unanimous report of that committee, the bill was, by the Senate, indefinitely postponed. This occurred at the last session. It is this same rejected bill that McGarrahan has again caused to be introduced into the Lower House, where it is now pending.

The committee of the House, to whom the former bill was referred, in 1868, passed a resolution requesting the Secretary of the Interior to suspend all action on the application of the New Idria Company for a Patent, until the fate of McGarrahan's bill should be determined, and the question is, does the passage of that resolution, or the pendency of that bill, form any just or legal ground for the withholding of the Patent?

Upon this point it appears that the Secretary of the Interior consulted the Attorney General, and from this officer he received an official communication, under date of June 22d, 1869, from which we make the following extract:

"If, as I understand, the New Idria Mining Company are prepared to establish, to the satisfaction of your Department, their claim under the statute of 1866, ch. 262, (4 Stat., 251,) to receive a patent for certain lands in California, they have a legal right to have the question of their claim to such patent passed upon, such that your Department is bound to consider and determine the same, notwithstanding the request from the Judiciary Committee of the House of Representatives for a suspension of action. Their claim, as I understand it, is of a title to land created by law. If, under the law, they have this title, and are prepared to furnish the proofs of it, the law gives them the right to a patent, and the issuing a patent is not made discretionary with the Executive officers of the Government.

"The question, then, resolves itself into this: Whether,

when a right is created by law, and a duty devolved upon the Executive Department under the same law, the enjoyment or enforcement of such rights can be suspended at the request of a committee of the House of Representatives? I am unable to see that this result could be obtained by any action, even of the whole House of Representatives, or of both branches of Congress, unless by a change in the law itself. To deprive any person of a right which the law creates, at the request of anybody, would be a novel idea under a system of government which is supposed to be a government of laws, and not of men."

From all this it will appear that the Act of 1866 directed, upon certain terms and conditions, a sale to the Company of a tract of land including three thousand feet upon this lode, "so extending laterally or otherwise as to conform to the local laws, customs and rules of miners." It will appear by the report of the proper officers of the Government, that all these conditions have been fully and faithfully performed; that the required price has been paid into the Treasury of the United States; that the quantity of land contained in the survey does not exceed the limits prescribed by the Act; and that, in the opinion of the Law Officer of the Government, there is no ground for further delay in the issuance of the patent.

Your petitioners are advised that by virtue of the proceedings aforesaid, had by them under the Act of 1866, they acquired a vested right to the said 480 acres, for which they have paid their money into the Treasury of the United States, and of which no future Act of Congress can, by any possibility, divest them; and that should McGarrahan, by any means, obtain a patent for any tract including the said 480 acres, that as to such portion, a Court of Equity, looking at this matter as did Attorney General Hoar, would treat McGarrahan as a trustee holding the legal title to the use of your petitioners, and would, upon application, compel him to convey the same to them. From the ruinous delay and expense of such litigation we entreat your Excel-

lency to save us, and we rest in entire confidence that this matter being presented in its true light to your Excellency, you will no longer withhold from us the evidence of title to property which we have honestly and fairly acquired under the laws of the United States.

By order of the Board.

WILLIAM E. BARRON,
President.

DECISION

OF THE

Commissioner of the General Land Office that the New Idria Mining Company have fully complied with the law of Congress of July 26, 1866, (extending the benefit of the pre-emption law over mineral lands,) and are entitled to a patent for the land embraced in their proofs, and which McGarrahan asks Congress to permit him to enter.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE, *December 5, 1870.*

W. H. LOWRY, Esq.,

Washington, D. C. :

SIR—Pursuant to the direction dated the 3d instant, of the honorable Secretary of the Interior, the following copy is furnished you, and is hereby certified to be a correct transcript from the record ; it being proper to add that the case has not yet been finally passed upon by the superior executive authority, but stands suspended, it is understood, in the department.

Very respectfully, your obedient servant,

[L. S.]

JOS. S. WILSON,

Commissioner.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE, *September 17, 1870.*

HON. J. D. COX,

Secretary of the Interior :

SIR—In accordance with the instructions of the honorable Secretary, this office has, in the ordinary course of business, and after due notice, taken up and considered an application made by the New Idria Mining Company

for a patent under the act of Congress approved July 26, 1866, (14 Stat., 251-2,) for 480 acres of mineral land situate in townships 17 and 18 south, of range 12 east, Mount Diablo meridian, California.

It appears that this New Idria interest falls within the alleged limits of the Gomez-Panoche-Grande claim, as shown by the diagram herewith.

In the Secretary's decision of the 13th August, 1870, the Gomez claim is held to be invalid in virtue of the judgment of the Supreme Court of the United States, (3 Wallace and 9 Wallace, pages 752 and 298,) and other proceedings specially referred to in said ruling. Dealing, therefore, with this New Idria claim as unaffected by the rejected Gomez title, the papers in said New Idria case have been examined in view of the before-mentioned act of Congress approved July 26, 1866, "granting the right of way to ditch and canal owners over the public lands, and for other purposes," the result of which examination is presented in the following, to wit:

1. The applicant aforesaid, viz, the "New Idria Mining Company," is a corporation organized January 25, 1858, by virtue of the laws of the State of California.

2. The said company holds by purchase, agreeably to the local customs or rules of miners, the possessory right to 480 acres of mineral land in what is called the San Carlos mining district in Fresno county, California, said area embracing what were three original locations or claims, to wit: the "Molino," "San Carlos," (or "El Resplendor,") and the "New Idria," located and recorded in the year 1854, as shown by certified copies of the records herewith; the yield of the mine being cinnabar or quicksilver, and the amount expended in labor and improvements thereon being over \$200,000.

3. It is further shown that said company on the 1st of February, 1867, filed with the United States register, at San Francisco, a "diagram" of the claim, with "notice"

of intention to apply for a patent; that the register published the notice in a newspaper nearest the location of the claim for ninety days, posted such notice in his office for that time, and for a like period the notice and diagram were posted on the claimed premises; that thereafter and in the month of June, 1867, the premises were surveyed under direction of the United States surveyor general, it not being shown to the department that any adverse claim was presented in the local courts of California in view of the 6th section of said act of July 26, 1866; that the plat of said survey received the approval of the said surveyor general on the 22d of June, 1868; that the expenses of survey, platting, with cost of publication of notice, were settled and an actual entry of the land made at the office of the register and receiver, and the amount of purchase money (\$2,400) paid; such proceedings in cases of mining claims being in accordance with the requirements of the statute.

4. There was, however, this irregularity in the New Idria proceedings. On the 1st April, 1867, the clerk of the Judiciary Committee of the House of Representatives sent to this office a resolution directing the Secretary of the Interior to withhold the issuing of a patent and to permit no proceedings in his department affecting the title to the Rancho Panoche Grande until the claim, then pending in Congress, shall have been disposed of.

5. Instructions to this effect were accordingly despatched to the surveyor general and register and receiver at San Francisco, California, on the 18th of April, 1867, and repeated to the register and receiver May 23, 1867, February 1, 1868, and August 17, 1868; yet, notwithstanding said suspensive orders, the surveyor general on the 22d of June, 1868, approved the survey, and the register and receiver with their letter of 29th July, 1868, forwarded the papers as a basis of patent.

6. In the abstract of the proceedings in the case, as

communicated by this office to the department, under date 3d January, 1870, it is stated that "if this claim had not been presented during the pendency of an order suspending action on the case of Rancho Panoche Grande, claimed to embrace the New Idria mine by its proprietor, the papers would be otherwise regular in form and might constitute a proper basis for a patent." And as the proceedings of the surveyor general and local officers, after the order of suspension, were merely in the way of authenticating and transmitting matter previously commenced and nearly completed before the receipt of such order, and as such proceedings are in all other respects in conformity to statutory requirements, it would seem a useless formality, attended with unnecessary expense and delay, to return the papers from the files of this office to the surveyor general and register and receiver at San Francisco merely for reapproval and retransmission, and it is accordingly ruled by this office that the proceedings of said New Idria Mining Company, under the act of July 26, 1866, being in compliance with said statute and free from any valid adverse title, the said New Idria Mining Company has met the requirements of the statute giving authority for the issuing of a patent.

Should it be held, however, that the aforesaid premature proceedings of the local officers render it necessary to have republication of notice, &c., and reapproval of survey, it is submitted as the opinion of this office that the claim for a patent may be approved by the board in virtue of the confirmatory powers conferred by the acts of Congress, approved August 3, 1846, (Stat. 9, p. 51,) March 3, 1853, (Stat. 10, p. 258,) and June 26, 1856, (Stat. 11, p. 22,) this mining interest assimilating to a pre-emption, and the question being one now between the United States and the New Idria Mining Company, under the ruling of the head of the department as to the Gomez claim. The foregoing decision is, of course, subject to the restraining

or reviewing power of the President, in view of the order communicated with the Hon. Secretary's letter of 23d ult., with regard to signing a patent for said claim.

The papers in the case are sent herewith, together with a list of the same. All of which is respectfully submitted, remaining, with great respect,

Your obedient servant,

JOS. S. WILSON,

Commissioner.

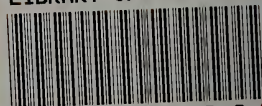
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